

February 6, 2006

NEPA Draft Report Comments
c/o NEPA Task Force
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

RE: Presidio Trust Comments on the National Environmental Policy Act (NEPA)
Draft Report

Dear NEPA Task Force Members:

The Presidio Trust appreciates this opportunity to comment on the recommendations contained in the NEPA Task Force *Initial Findings and Draft Recommendations*, December 21, 2005. By way of background, the 1,491 acre Presidio of San Francisco is at the center of the Golden Gate National Recreation Area (GGNRA), which was created by Congress in 1972. The GGNRA legislation ensured that if the military deemed the Presidio excess to its needs, jurisdiction would be transferred to the National Park Service (NPS). In 1989, the Presidio was designated for closure and the U.S. Army transferred the Presidio to the NPS in 1994.

In 1996, Congress enacted the Presidio Trust Act (Public Law 104-333, 110 Stat. 4097, codified as amended at 16 U.S.C. §460bb appendix) creating the Trust and giving the Trust jurisdiction over the 1,168-acre inland area of the Presidio known as Area B. The NPS continues to manage the shoreline area, or Area A. To limit taxpayer liability for the Presidio's ongoing costs, Congress mandated that the park be financially self-sufficient by 2013 and gave the Trust the authority to lease property in order to generate the revenues needed to operate the park and undertake the necessary capital improvements. The Trust is a wholly-owned federal government corporation whose mission is to preserve the Presidio in perpetuity for the public benefit.

As was made clear through the comments received by the NEPA Task Force, the threat of NEPA litigation drives many agency decisions throughout the NEPA analysis process. The Trust endorses efforts by the Task Force to reduce unnecessary NEPA litigation. The recommendation to establish a reasonable time period for filing a NEPA challenge (180 days), outlined in Recommendation 4.1, is particularly laudable. Recommendation 4.1 is consistent with the approach taken by some states (e.g. the California Environmental Quality Act) and would afford greater certainty in the decision-making process.

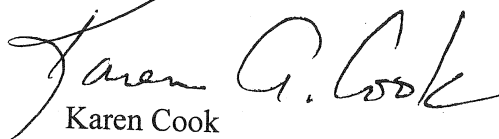
In this same vein, the Trust is concerned with the litigation effects of some of the other report recommendations. Recommendation 2.1 would direct CEQ to prepare regulations giving weight to localized comments. It is unclear though how an agency would show that it gave greater weight to one group's comments versus another's. Additionally, federal agencies often have to take a national perspective. By way of illustration, the Presidio is bounded by the San Francisco Bay on the north, the Pacific Ocean on the west, and residential neighborhoods of the City of San Francisco on the south and the east. The Trust has a responsibility to the nation to protect and enhance the Presidio but improving park resources (rehabilitating historic buildings for leasing or constructing trails to improve public access) may result in impacts to neighboring residents, such as increased traffic. NEPA's existing mandates already require a full analysis of these impacts, but Recommendation 2.1 would appear to direct the Trust to place a greater emphasis on impacts to the local community over the benefits to the larger national constituency. The threat of a lawsuit already provides local interests with enough influence to steer the NEPA debate. Recommendation 2.1 would increase that influence by providing another avenue for litigation.

Likewise, Recommendation 3.1 suggests amending NEPA to require that tribal, state, and local stakeholders be granted cooperating agency status at their request. While on the surface this recommendation seems beneficial, a majority of state and local agencies are understaffed and underfunded. Many do not have the resources to participate in a timely fashion and choosing not to fully address late cooperating agency comments would be at a lead agency's peril (*See Davis Mountains Trans-Pecos Heritage Association v. Federal Aviation Administration*, No. 02-60288, 2004 U.S. App. LEXIS 21267 (5th Cir. Oct. 12, 2004) (agency failed to adequately address mitigation measures proposed by the FAA that were related to civil and commercial aviation)). Recommendation 3.1 could result in further delays or could increase the cost of NEPA document completion if local participation was federally funded.

Finally, the Trust is doubtful that mandatory timelines for the completion of NEPA documents would be effective in reducing delays in the process (Recommendation 1.2). The Trust, like most federal agencies, is always striving to complete NEPA review in a timely fashion and delays are often not within Trust control. The requirement to have CEQ provide a written determination to extend a statutorily imposed completion deadline would only add to the paperwork burden of producing a thorough document.

Thank you again for the opportunity to comment on this important effort to update and improve NEPA. Please contact me at (415) 561-5300 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen A. Cook". The signature is fluid and cursive, with the first name "Karen" and last name "Cook" clearly legible.

Karen Cook
General Counsel

cc: Craig Middleton, Executive Director